

ADDENDUM  
REQUEST FOR PROPOSALS  
For a Central Site Monitoring System  
Department of Public Safety  
Gambling Control Board

8. **2.16.3 Fidelity Bond**

*Is amended to read as follows:*

Prior to contract execution, the successful bidder will be required to obtain a Fidelity Bond in the amount of five million dollars (\$5,000,000) covering any loss to the Board due to any fraudulent or dishonest act on the part of the successful bidder's officers, employees, agents or subcontractors. The Board would accept fidelity insurance so long as it provides identical protection to the State as a fidelity bond would provide.

16. **Section 3.1.2 Location of the Primary Central Site Monitoring System**

The location of the primary Central Site Monitoring System is limited to sites within ~~Maine~~ the continental United States, not to include a slot machine operator facility. ~~For one alternative, the Gambling Control Board can make available space for computer equipment and operations in facilities operated by the Maine Department of Public Safety.~~ Other possibilities include, but are not limited to, another State-controlled facility, a leased third-party facility, or an existing computer operation of the successful bidder. The Board requires that the CSMS be located and operated in a data center that is staffed 24/7 every day of the year. Bidders shall describe the location, features, staffing, and security of the proposed facility where they intend to locate the Central Site Monitoring System.

21. **Appendix C**

*The State can insert the following contract language to Appendix C. This language would replace the current contract item 18. with the following two new sections. The contract points would then be renumbered from the current **19. NOTICE OF CLAIMS** through the current **27. ENTIRE AGREEMENT.** The new numbers would be 20 through 28.*

**18. STATE HELD HARMLESS** If a third party brings a claim against the Department for bodily injury (including death) to persons or physical damage to tangible personal property or real property or for a violation or infringement of any copyright or trademark for which Provider is legally liable, Provider will defend the Department against such claim at its expense and pay all costs,

damages and attorney's fees that a court finally awards or that are included in a settlement approved by Provider, provided that the Department:

1. promptly notifies Provider in writing of the claim; and
2. allows Provider to control, and cooperates with Provider in, the defense and any related settlement negotiations.

## **19. LIMITATION OF LIABILITY**

Circumstances may arise where, because of a default on Provider's part or other liability, the Department is entitled to recover damages from Provider. In each such instance, regardless of the basis on which the department is entitled to claim damages from Provider (including breach, negligence, misrepresentation, or other contract or tort claim), Provider is liable for no more than:

1. damages for violation or infringement of any copyright or trademark;
2. damages for bodily injury (including death) to persons and damages for physical injury to tangible personal property or real property; and
3. the amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" includes Materials, Machine Code and LIC.

This limit also applies to any of Provider's subcontractors and program developers. It is the maximum for which Provider and its subcontractors and program developers are collectively responsible.

### **Items for which Provider is Not Liable**

Under no circumstances is Provider, its subcontractors, or program developers liable for any of the following, even if informed of their possibility:

1. loss of, or damage to, data;
2. special, incidental, or indirect damages or for any economic consequential damages; or
3. lost profits, business, revenue, goodwill, or anticipated savings.

24. **Section 1.6 Schedule**

*Is amended to read as follows:*

<u>Event</u>	<u>Date</u>
RFP Issued	September 27, 2004
Bidder's Conference	October 12, 2004
Bidders' Written Questions Due	October 19, 2004
Responses by the Board to Questions	October 29, 2004
Bidders' Proposals Due	November 12, 2004
Site Visits and/or Demonstrations	November 22-24, 2004
Apparent Winning Proposal(s) Designated	December <del>4</del> <u>16</u> , 2004
Approval by the Gambling Control Board	December 16, 2004
Contracts Executed by	January 14, 2005

37. **Section 2.8 Termination for Default**

*Is amended to read as follows:*

In case of default by a successful bidder, the Board may upon the failure of the successful bidder to cure such default after thirty (30) days prior written notice to that successful bidder terminate the contract without further liability to the Board, to the State of Maine, its departments, divisions, agencies, sections, commissions, officers, agents and employees, and procure the services from other sources, and hold that successful bidder responsible for any excess costs occasioned thereby.

40. **Section 2.17.12 Unauthorized Modifications**

*Is amended to read as follows:*

If an unauthorized modification occurs, the Board may assess initial liquidated damages of \$5,000 and additional liquidated damages of \$1,000 per day for each day between the issuance of a removal order and the actual removal of the unauthorized modification and restoration of the device or system to its previous operating state. Liquidated damages will only be assessed if the unauthorized modification was made by the successful bidder or a person acting under the control of the successful bidder.

43. **Section 2.29 Management of Software Documentation**

*Is amended to read as follows:*

Before the system goes into production, a successful bidder is required to deliver to the Board, or place in escrow with an agent designated by the Board, ~~a complete listing of the software source programs,~~ software documentation, operations manuals, service manuals and written procedures, ~~with the program object code of all software.~~ These materials would allow the Board to continue operations in the event a successful bidder becomes unable to perform. The successful bidder shall provide a current copy of the source code and executable code for all proprietary software to a mutually acceptable third party escrow, at a mutually acceptable location, available to the Board to the extent necessary for the Board to continue to support the CSMS or any component thereof upon i) any material breach of the contract by the successful bidder resulting in termination; ii) insolvency; or iii) failure of the successful bidder to continue to support the CSMS or any component thereof.

The escrow arrangement is subject to approval by the Board and such approval by the Board shall not be unreasonably withheld. ~~a~~ All costs associated with maintaining the materials in escrow will be the obligation of the successful bidder.

As system changes are implemented, in addition to the change materials, documentation including change description, reason for change, personnel instituting change, authorization for change, and date of change shall be deposited to continue the Board's protection. Changes to the materials in escrow must be effected within thirty (30) days of installation in production operations. Appropriate documentation and justification for changes shall be supplied to the Board for review prior to execution.

~~Access to the materials in escrow for review and use of the contents shall be at the sole discretion of the Board, and the Board will exercise discretion to protect the intellectual property of the successful bidder.~~

**48. Section 1.4 Term of Contract**

The contract resulting from this RFP is expected to be in effect for a period of five (5) years to include five (5) years of venue operation. The contract may be extended at the discretion of the Board, with the concurrence of the successful bidder, for an extension of up to five (5) years.

## **2.5 Background Investigations and Successful Bidder Licensing**

*Is amended to read as follows:*

In order to carry out the contract the successful bidder must ~~be licensed in accordance with 8 MRSA Chapter 31, Section 1015,~~ and meet the qualifications of Section 1016. The background investigations will support this licensing process.